

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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UNITED STATES OF AMERICA,  
Appellant,  
vs.  
SIDNEY E. KNIGHT,  
Appellee.

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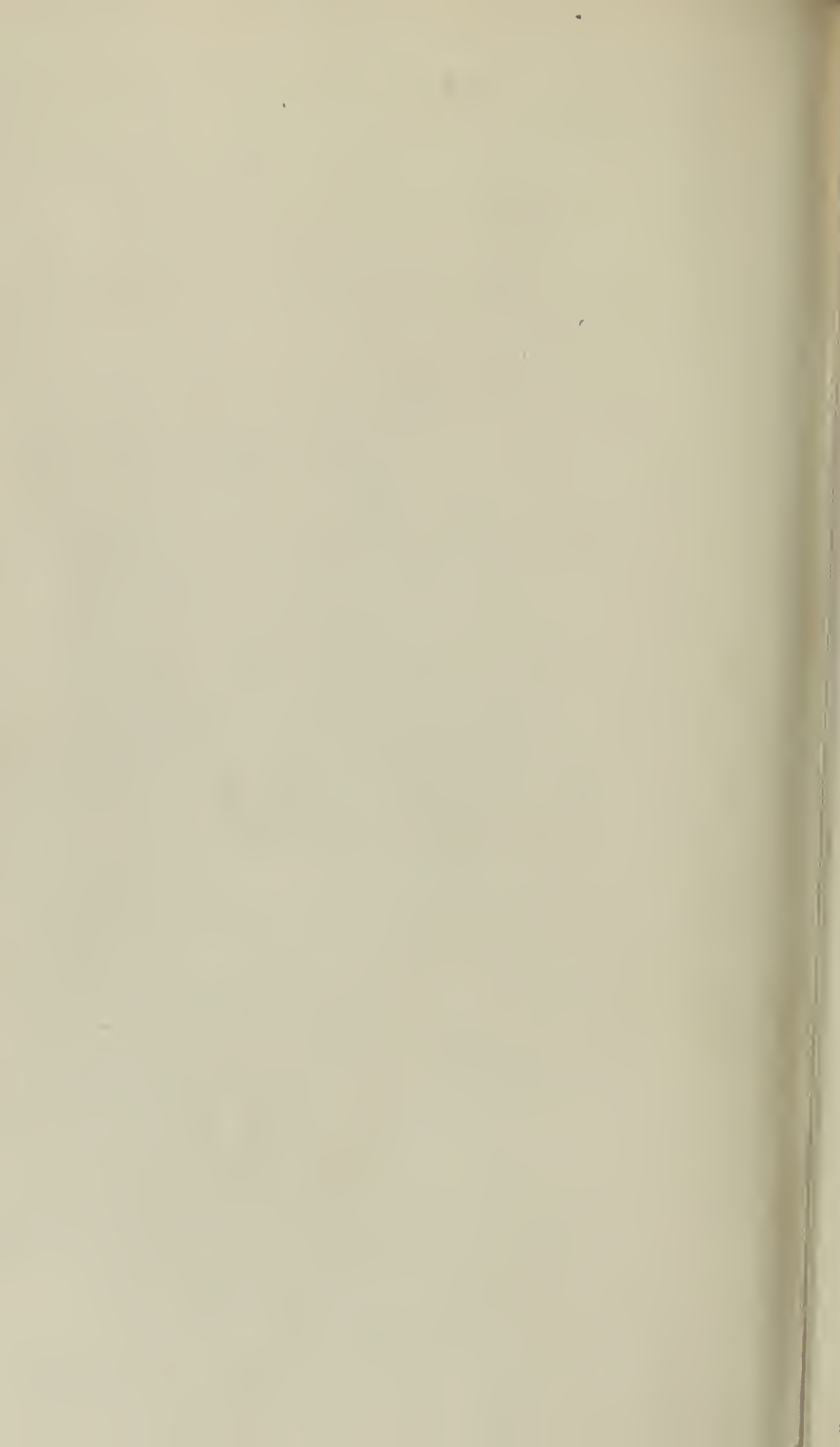
Transcript of Record.

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Upon Appeal from the United States District Court  
for the District of Montana.

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F. D. MONKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,  
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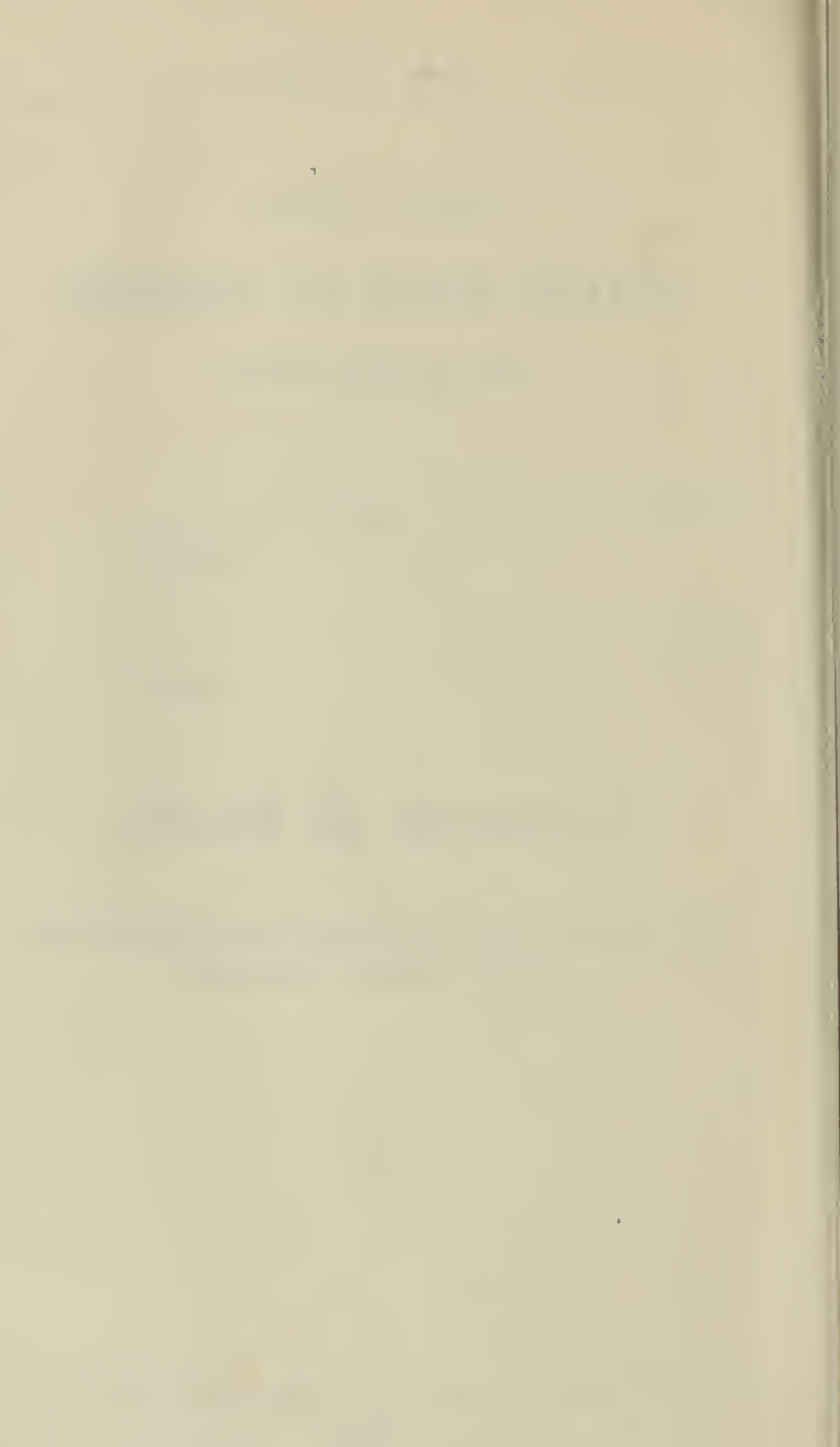
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Transcript of Record.

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Upon Appeal from the United States District Court  
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[Clerk Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF  
RECORD.

JOHN L. SLATTERY, Esq., U. S. Attorney, Helena,  
Montana,

RONALD HIGGINS, Esq., Asst. U. S. Attorney,  
Helena, Montana,

W. H. MEIGS, Esq., Asst. U. S. Attorney, Helena,  
Montana,

Attorneys for Plaintiff and Appellant.

[1\*]

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In the District Court of the United States, District  
of Montana.

No. 222—IN EQUITY.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

BE IT REMEMBERED, That on June 22, 1922,  
bill of complaint was duly filed herein, being in the  
words and figures following, to wit: [2]

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\*Page-number appearing at foot of page of original certified Tran  
script of Record.

In the District Court of the United States, for the  
District of Montana, Helena Division.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

### COMPLAINT.

To the Honorable Judge of the District Court of the  
United States, for the District of Montana:

COMES NOW the United States of America, the  
plaintiff herein, and by and through its attorney,  
John L. Slattery, United States Attorney for the  
District of Montana, brings this, its bill, against  
Sidney E. Knight, a citizen of the United States of  
America, and a resident of Capetown, Union of  
South Africa; and for its cause of action, plaintiff  
states:

#### I.

That on the 5th day of November, 1900, at the  
city of Helena, in the county of Lewis and Clark, in  
the State and District of Montana, and within the  
jurisdiction of this Court, by proceedings duly had  
in the District Court of the First Judicial District  
of the State of Montana, in and for the said County  
of Lewis and Clark, and in a proceeding then and  
there pending in said court, entitled "In the Matter  
of the Application of Sidney E. Knight, an alien,  
to become a citizen of the United States of Amer-  
ica," it was by the said Court duly ordered, adjudged



and decreed that the said Sidney E. Knight, the defendant herein, be, and he was thereby, admitted and declared to be a citizen of the United States [3] of America; and the said Court was then and there competent to exercise, and then and there was exercising, jurisdiction in naturalization proceedings under the laws of the United States of America.

II.

That on said 5th day of November, 1900, by virtue of the said order, judgment and decree of the said Court, the said defendant, who, prior thereto, was a subject of Victoria, Queen of Great Britain and Ireland, became, and ever since has been, a naturalized citizen of the United States of America, and on said date, a certificate of such citizenship was duly issued by the said Court to the defendant herein.

III.

That a copy of a duly certified copy of the said order, judgment and decree, is hereunto annexed, and referred to, and by this reference is made a part of this complaint, as fully, and in all respects as though set out herein at length.

IV.

That within five years after the issuance of said certificate of citizenship to the defendant herein, and on or about the month of September, 1901, the said defendant herein went to a foreign country, to wit, South Africa, and in said month, took and established a permanent residence therein, and ever since said month of September, 1901, the defendant

has resided, and still resides in said foreign country, to wit, South Africa.

## V.

That the said certificate of citizenship was fraudulently and illegally procured by the defendant, in that the defendant, at the time he procured the issuance of the same, did not intend to become a permanent resident of the United States of America, but he intended only to obtain [4] said certificate as *indicia* of such citizenship, in order that he might enjoy the rights and protection of a citizen of the United States of America, and yet within five years thereafter take up and maintain a permanent residence in a foreign country.

WHEREFORE, plaintiff prays that the said certificate of citizenship so issued to the defendant, be set aside and cancelled as fraudulent; that plaintiff recover its costs herein, and for such other and further relief as to the Court may seem just and equitable in the premises.

JOHN L. SLATTERY,

United States Attorney for the District of Montana.

[5]

United States of America,  
State of Montana,—ss.

John L. Slattery, being first duly sworn, on his oath deposes and says:

*That* is the duly appointed, qualified and acting United States Attorney for the District of Montana; that he is the attorney for the plaintiff herein; that he has read the foregoing complaint and knows the

contents thereof, and that the same is true to the best of his knowledge, information and belief.

(Signed) JOHN L. SLATTERY.

Subscribed and sworn to before me this 22d day of June, 1922.

[Seal]

C. R. GARLOW,

Clerk of United States Court, District of Montana.

[6]

In the District Court of the First Judicial District  
of the State of Montana.

Present: Hon. HENRY C. SMITH, Judge.

In Open Court, This 5th Day of November, A. D.  
1900.

In the Matter of the Application of SIDNEY E.  
KNIGHT, an Alien, to Become a Citizen of  
the United States of America.

It appearing to the satisfaction of this Court, by the oaths of Elmer Woodman, and M. M. Potter, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that Sidney E. Knight, a native of England, has resided within the limits and under the jurisdiction of the United States five years at least, last past; and within the State of Montana for one year, last past; and that during all of said five years' time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and it also appearing to the Court, by competent evidence, that the said

applicant has heretofore, and more than two years since, and in due form of law, declared his intention to become a citizen of the United States; and having now here, before this court, taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and adjure all allegiance and fidelity to every foreign Prince, Potentate, State or Sovereignty whatever, and particularly to

VICTORIA, Queen of Great Britain and Ireland,

It is therefore ordered, adjudged and decreed, that the said

SIDNEY E. KNIGHT [7]

be, and he is, hereby admitted and declared to be a citizen of the United States of America.

(Signed) HENRY C. SMITH,

Judge.

Signature: S. E. KNIGHT (Signed).

Office of the Clerk of the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark,—ss.

I, the undersigned, Clerk of the District Court of the First Judicial District of the State of Montana, in and for the county of Lewis and Clarke, said Court being a court of record having common law jurisdiction, and a clerk and seal, do certify that the above is a true copy of the Act of Naturalization of Sidney E. Knight, as the same appears upon the records of said court now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 2d day of February, in the year of our Lord one thousand

nine hundred and twenty-two, and in the year of our Independence the one hundred and forty-sixth.

[Seal]

(Signed) WILL WHALEN,

Clerk.

By (Signed) C. T. COTTINGHAM,

Deputy Clerk.

Filed June 22, 1922. C. R. Garlow, Clerk.

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Thereafter, and on June 22, 1922, a subpoena in equity was duly issued herein, being in the words and figures following, to wit: [8]

THE UNITED STATES OF AMERICA.

In the District Court of the United States, for the District of Montana.

IN EQUITY.

SUBPOENA.

The President of the United States of America,  
GREETING: To Sidney E. Knight, Defendant:

YOU ARE HEREBY COMMANDED, That in said District Court of the United States aforesaid, at the courtroom in Federal Building at Helena, Montana, on the day specified in the memorandum below, you answer or otherwise plead to a bill of complaint exhibited against you in said court by The United States of America, complainant, and to do and receive what the said Court shall have considered in that behalf:

This is a suit to cancel a certificate of naturalization issued to you on the 5th day of November, 1900,

in the city of Helena, in the county of Lewis and Clark, in the State and District of Montana, by virtue of which certificate of naturalization you then became a citizen of the United States of America.

The bill of complaint alleges that within five years after the issuance of said certificate of naturalization, and on or about the month of September, 1901, you went to a foreign country, to wit, South Africa, and in said month you took up and established a permanent residence therein, and ever [9] since said month of September, 1901, you have resided and still reside in said South Africa; and that you procured the said certificate of naturalization fraudulently and illegally in that at the time you procured the issuance of the said certificate you did not intend to become a permanent resident of the United States of America, but intended only to obtain such certificate as *indicia* of such citizenship in order that you might enjoy the rights and protection of a citizen of the United States of America, and yet within five years after the issuance of such certificate, to take up and maintain a permanent residence in a foreign country.

WITNESS, the Honorable GEO. M. BOURQUIN, Judge of the District Court of the United States for the District of Montana, this 22d day of June, in the year of our Lord one thousand nine hundred and twenty-two and of our Independence the 146th.

[Seal]

C. R. GARLOW,

Clerk.

MEMORANDUM PURSUANT TO RULE 12,  
SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED to file your answer or other defense in the clerk's office of said court on or before the sixtieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso*.

[Seal]

C. R. GARLOW,  
Clerk.

JOHN L. SLATTERY,  
United States Attorney,  
Solicitor for Complainant, Helena,  
Montana.

Filed Oct. 21st, 1922. C. R. Garlow, Clerk. [10]

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Thereafter, and on June 22, 1922, affidavit for publication of subpoena and praecipe was duly filed herein, being in the words and figures following, to wit: [11]

In the District Court of the United States, for the  
District of Montana, Helena Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIDNEY E. KNIGHT,

Defendant.

AFFIDAVIT FOR PUBLICATION OF SUB-  
POENA.

United States of America,  
State of Montana and County of Lewis and  
Clark,—ss.

John L. Slattery, being first duly sworn, on his  
oath deposes and says:

That he is the duly appointed, qualified, and act-  
ing United States Attorney for the District of Mon-  
tana; that he is the attorney for the plaintiff herein;  
that the above-entitled cause is pending in the  
above-entitled court; that affiant is informed, be-  
lieves and therefore alleges the fact to be, that the  
defendant herein, Sidney E. Knight, does not reside  
in the United States of America, but does reside at  
Capetown, in the Union of South Africa, and is  
absent from the United States of America; that a  
cause of action exists in favor of the United States  
of America, and against the defendant in said cause,  
to wit, Sidney E. Knight, who is the defendant with  
respect to whom the service of the subpoena herein  
is to be made; that the said Sidney E. Knight is a  
necessary and proper party to the action, now pend-  
ing in this court, and entitled as aforesaid.

JOHN L. SLATTERY,  
Attorney for the Plaintiff.

Subscribed and sworn to before me this 22d day  
of June, 1922.

[Seal] C. R. GARLOW,  
Clerk of the United States Court, District of Mon-  
tana. [12]



In the District Court of the United States, for the  
District of Montana, Helena Division.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

PRAECIPE.

To the Clerk of the Above-entitled Court:

Now, upon the filing of the foregoing affidavit in  
the above-entitled case, the above-named plaintiff  
requires you to cause the service of the subpoena  
herein to be made by publication thereof.

JOHN L. SLATTERY,  
Attorney for the Plaintiff Herein.

Filed June 22, 1922. C. R. Garlow, Clerk.

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Thereafter, and on June 22, 1922, order for publi-  
cation was duly made and filed herein, being in the  
words and figures following, to wit: [13]

In the District Court of the United States, for the  
District of Montana, Helena Division.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

## ORDER FOR PUBLICATION.

The plaintiff herein, having filed herein the affidavit of its attorney, John L. Slattery, United States Attorney for the District of Montana, in which affidavit it is stated that the defendant in this case, to wit, Sidney E. Knight, does not reside in the United States of America, but does reside at Capetown, in the Union of South Africa; and that a cause of action exists in favor of the United States of America and against the said Sidney E. Knight, the defendant in respect to whom the service of the subpoena herein is to be made; and that the said Sidney E. Knight is a necessary and proper party to this action; and the plaintiff upon filing such affidavit, having filed a praecipe requiring the clerk of this court to cause the service of the subpoena herein to be made by publication thereof; and the above-entitled court being the court in which this case was commenced, it is hereby ORDERED

That the service of the subpoena herein be made by publication thereof in "Montana Record Herald," the newspaper which is hereby designated as most likely to give notice to the said Sidney E. Knight, who is the person to be served by such subpoena, and that such subpoena be published at least once a week for four successive weeks; the said newspaper being [14] published at Helena, in the State and District of Montana.

Dated June 22, 1922.

C. R. GARLOW,

Clerk of the United States Court, District of Montana.

Filed June 22, 1922. C. R. Garlow, Clerk.

Thereafter, and on October 21, 1922, affidavit of mailing copy of subpoena and bill of complaint was duly filed herein, being in the words and figures following, to wit: [15]

In the District Court of the United States for the  
District of Montana, Helena Division.

EQUITY—No. 222.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIDNEY E. KNIGHT,

Defendant.

AFFIDAVIT OF MAILING.

State of Montana,

County of Lewis & Clark,—ss.

C. R. Garlow, being first duly sworn, on his oath deposes and says: That during all the times herein mentioned he was and still is the duly appointed, qualified and acting clerk of the United States District Court for the District of Montana; that the bill of complaint in the above-entitled cause was filed in the office of the clerk of said district court on the 22d day of June, 1922, and that a subpoena, duly entitled in said cause, was on said 22d day of June, after the filing of said bill of complaint, issued by affiant as such clerk, and thereafter, and on said date, affiant, as such clerk, deposited in the United States Postoffice at Helena, Montana,

a copy of the said subpoena and the said bill of complaint contained in an envelope, with the postage thereon fully prepaid, directed to the above-named Sidney E. Knight, the person to be served, at his place of residence, the said envelope being addressed as follows:

“Sidney E. Knight,  
Capetown,  
Union of South Africa.”

That the said envelope containing said copies was duly registered as registered mail, and that upon registering [16] the same and mailing the same as aforesaid, affiant received the annexed registry receipt.

C. R. GARLOW,  
Clerk United States District Court, District of  
Montana.

Subscribed and sworn to before me this 21st day of October, 1922.

[Seal] IRVIN BAER,  
Notary Public for the State of Montana, Residing  
at Helena, Montana.

My commission expires February 1, 1925.

Filed Oct. 21st, 1922. C. R. Garlow, Clerk.

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That on July 19, 1922, affidavit of publication of subpoena in equity was filed, being in the words and figures following, to wit: [17]

AFFIDAVIT OF PUBLICATION OF SUB-  
POENA IN EQUITY.

AFFIDAVIT OF PUBLICATION.

State of Montana,

County of Lewis and Clark,—ss.

A. Looby, being duly sworn, says he is the fore-  
man of the Montana Record Publishing Company,  
a corporation, the printer of the "Montana Record-  
Herald," a daily newspaper published in the city  
of Helena, county of Lewis and Clark, and State  
of Montana; that the annexed notice is a true copy  
of a notice which was published in said newspaper  
once a week for a period of four weeks commen-  
cing on the 23d day of June, 1922, and ending on  
the 14th day of July, 1922.

A. LOOBY.

Subscribed and sworn to before me this 15th day  
of July, 1922.

[Seal]

C. A. McLAUGHLIN,

Notary Public for the State of Montana, Residing  
at Helena, Montana.

My commission expires January 17, 1924.

IN EQUITY.

THE UNITED STATES OF AMERICA.

In the District Court of the United States for the  
District of Montana.

The President of the United States of America.

Greeting: To Sidney E. Knight, Defendant:

You are hereby commanded, That in said district

court of the United States aforesaid, at the courtroom in federal building at Helena, Mont., on the day specified in the memorandum below, you answer or otherwise plead to a bill of complaint exhibited against you in said court by the United States of America, complainant, and to do and receive what the said court shall have considered in that behalf.

This is a suit to cancel a certificate of naturalization issued to you on the fifth day of November, 1900, in the city of Helena, in the county of Lewis and Clark, in the state and district of Montana, by virtue of which certificate of naturalization you then became a citizen of the United States of America.

The bill of complaint alleges that within five years after the issuance of said certificate of naturalization, and on or about the month of September, 1901, you went to a foreign country, to wit, South Africa, and in said month you took up and established a permanent residence therein, and ever since said month of September, 1901, you have resided and will reside in said South Africa; and that you procured said certificate of naturalization fraudulently and illegally in that at the time you procured the issuance of the said certificate you did not intend to become a permanent resident of the United States of America, but intended only to obtain such certificate as *indicia* of such citizenship in order that you might enjoy the rights and protection of a citizen of the United States of America, and yet within five years after the issuance of such certifi-

cate, to take up and maintain a permanent residence in a foreign country.

Witness, the Hon. GEORGE M. BOURQUIN, Judge of the district court of the United States for the district of Montana, this twenty-second day of June, in the year of our Lord one thousand nine hundred and twenty-two and of our independence the 146th.

[Seal]

C. R. GARLOW,  
Clerk.

MEMORANDUM PURSUANT TO RULE 12,  
SUPREME COURT U. S.

You are hereby required to file your answer or other defense in the clerk's office of said court on or before the sixtieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso*.

[Seal]

C. R. GARLOW,  
Clerk.

JOHN L. SLATTERY,

United States Attorney,

Solicitor for Complainant, Helena, Mont.

First publication June 23, 1922.

(Letter-head of Office of United States Attorney—  
District of Montana.)

Clerk U. S. District Court,

Helena, Montana.

Dear Sir:

RE: U. S. vs. Sidney E. Knight.

Herewith I enclose affidavit of publication of the summons in the above cause, showing that the same was published in the "Montana Record Her-

ald," at the city of Helena, once a week for four successive weeks, commencing on June 23, 1922, and ending on July 14, 1922. You will please file the affidavit in the above cause.

Respectfully yours,

JOHN L. SLATTERY,

United States Attorney.

JLS/IS.

Filed July 19, 1922. C. R. Garlow, Clerk. [18]

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Thereafter, and on June 16, 1923, an order *pro confesso* was duly filed and entered herein, being in the words and figures following, to wit: [19]

In the District Court of the United States, District of Montana, Helena Division.

EQUITY—No. 222.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIDNEY E. KNIGHT,

Defendant.

ORDER PRO CONFESSO.

The defendant herein, Sidney E. Knight, having been duly and regularly served with the subpoena in equity herein on the 14th day of July, 1922, and having failed to file an answer or other pleading, or make any appearance of any kind in this cause, within sixty days from and after said 14th day of July, 1922;



NOW, THEREFORE, on motion of John L. Slattery, United States Attorney for the District of Montana, and the attorney for the plaintiff herein,

IT IS HEREBY ORDERED AND DECREED that the bill herein be taken as confessed as to the defendant herein, Sidney E. Knight.

Dated June 16, 1923.

BOURQUIN,  
Judge.

Filed June 16, 1923. C. R. Garlow, Clerk. By H. H. Walker, Deputy. [20]

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Thereafter, and on August 1, 1923, the decision of the Court was duly filed herein, being in the words and figures following, to wit: [21]

In the District Court of the United States, District of Montana, Helena Division.

EQUITY—No. 222.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

DECISION.

This suit is to cancel defendant's certificate of citizenship. Subpoena was served by publication, defendant made default, and final hearing is *ex*

*parte*. Nevertheless, the inescapable responsibility of Courts for their decisions, and their like obligation to righteousness therein, whether cases are *ex parte* or contested, demand careful scrutiny of the integrity of the proceedings and of the sufficiency of the evidence. Hence, brief references to features that otherwise might be deemed fatal defects that escaped the Court. It does not appear the suit is upon any of the affidavits of Sec. 15, Act June 29, 1906, but whether the suit could be maintained in the absence of statute (*Johannessen vs. U. S.* 225 U. S. 240), the affidavit is not jurisdictional.

See *U. S. vs. Leles*, 227 Fed. 190.

The statute is inclusive, not exclusive, and like statutes for actions on complaints by private prosecutors, does not preclude public prosecutors from proceeding of their own motion to enforce the laws.

The complaint alleges defendant procured the certificate in this judicial district in November, 1900, went to South Africa in September, 1901, established permanent residence there, [22] at all times hitherto and now there maintained. No reference is made to defendant's last known residence in this country, and so it does not, as it should, affirmatively appear by direct and positive averment that this court has jurisdiction of subject matter and person of defendant. Altho sec. 15 does not expressly prescribe venue of a suit against a defendant resident abroad at his last known residence in this country, that is its import when as usual is considered its implications, analogies, the substan-

tial nature of the issue, the purpose of venue and notice and the circumstances affecting both. Obviously, Congress did not intend, contrary to principle and precedent, suit and notice elsewhere and haphazard from Alaska to Florida.

It may be the pleader counted on a presumption that defendant's residence in this judicial district, when certificate issued, continued until he went abroad, and it may be that the omission could be remedied by amendment. Upon either supposition the merits may be determined. Preliminary thereto, the query in *U. S. vs. Sharrock*, 276 Fed. 31, whether if a citizen abroad is jurisdiction here to litigate status and whether is due process in service of subpoena by publication, is answered yes. The relations between state and citizen, the latter's obligations to the former, are unchanged by his absence. The state is where he left it. He is bound to hear and to respond to its call to render service of allegiance and to account for default therein at any time in any place. It is not obliged to pursue him with personal notice, but may adopt publication or other convenient method. For the state's purposes the *res* and *situs* of the relation between it and the absent citizen remain in the territory of the state. There is analogy in marriage and divorce. Hence, jurisdiction and due process.

Adverting to the merits, the charge, on information [23] and belief, is that defendant fraudulently procured the certificate in that he then "did not intend to become a permanent resident of the

United States" (the statute is "permanent citizen," perhaps equivalent terms. See *Luria vs. U. S.*, 231 U. S. 9). The only evidence is a copy of the certificate of citizenship, and a narrative by plaintiff's counsel at Cape Town, certified by its Department of State and presented by the district attorney, as follows:

"I, Charles J. Pisar, Vice Consul of the United States of America, at Cape Town, Union of South Africa, hereby certify that I am personally acquainted with Sidney Ernest Knight, who resides at Cape Town; that he stated under oath on May 26, 1917, when he registered as an American citizen at the American Consulate General at Cape Town, that he was born in London on September 24, 1875; that he came to the United States in May, 1890; that he was a naturalized American citizen, submitted his naturalization certificate, issued by the First Judicial Court at Helena, Montana, on November 5, 1900, in proof thereof; that he came to Cape Town on September 13, 1901, for the purpose of representing the Mercantile Agency, R. G. Dun & Company, of 290 Broadway, New York City, which firm he has constantly represented in South Africa since, and that he intended to return to the United States for permanent residence whenever his employers so desired.

I further certify that on October 25, 1920, Mr. Knight appeared at the American Consulate General at Cape Town, bearing passport No. 32218/11 issued to him by the Government of the Union of South Africa on October 19, 1920, with a request

for a visa thereto to enable him to proceed to the United States in connection with the business of the firm he represents, and that such a visa was granted by Vice Consul Charles W. Allen, to whom Mr. Knight was not personally known to be a citizen of the United States.

I further certify that answering an invitation to call at the American Consulate General, Mr. Knight appeared on October 26, 1921, and upon being questioned concerning his citizenship, stated to me that he applied for a British passport in October, 1920, for specific reasons which he declined to divulge, that when he applied for said passport he was not required to take an oath of allegiance to the British Crown, or to swear to the declaration made in applying for the passport; that he admitted that he has now lived for twenty years in South Africa, returning to the United States but once during this period, and that he did not know when he would return for permanent residence; that he had voted on several occasions at elections in South Africa, and that he has acquired interest in local community affairs and intended to [24] take an active part therein during his residence here.

I further certify that Mr. Knight left the United States within less than one year after completing his naturalization as a citizen of the United States of America, and while he has been representing American interests in South Africa, he has failed to adhere to his oath of allegiance as an American citizen, and that his naturalization as an American

citizen was fraudulently obtained, and should be revoked.

I further certify that Mr. Knight refused to surrender his Certificate of Naturalization.

Given under my hand and official seal at city of Cape Town, Union of South Africa, this 29th day of October, A. D. 1921."

[Seal]

CHARLES J. PISAR,

Vice-Consul of the United States of America.

Section 15 provides that if any naturalized citizen within five years after issuance of certificate, takes "permanent residence" abroad, "it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent"; that consuls "shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence" therein, "and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship."

The statute (1) creates a rebuttal presumption (perhaps) of past intent by proof of subsequent acts, and (2) imposes a duty on consuls and gives evidentiary competency to some of their *ex parte*

and extrajudicial statements. It invades the law against hearsay evidence, always a dangerous innovation, and is not to be extended by implication.

At the same time to serve its purpose of information [25] and to facilitate proof, the statute must be reasonably construed. The competency it creates can extend no farther than the duty, viz., to furnish names of naturalized citizens of permanent residence, in consuls' respective jurisdictions. Not everything the consul incorporates in his narrative will be competent and admissible, but only that which is relevant, material and competent, were the consul testifying on oath to the facts it is his statutory duty to report and none other. Accordingly, the narrative aforesaid is evidence only as follows: that May 26, 1917, at the consulate in Cape Town, defendant registered as an American citizen and on oath declared as follows; his name and time and place of naturalization; that he arrived in Cape Town on September 13, 1901, in business representation of a noted New York concern, had since continuously represented it in South Africa, and intended to return to the United States for permanent residence whenever his employer so desired; that Oct. 26, 1922, defendant, at said consulate, admitted that in October, 1920, he had applied for a British passport, had lived twenty years in South Africa, in that time had returned to the United States but once, did not know when he would return for permanent residence, had voted in South Africa, and was interested in community affairs and intended to be active therein; and that defend-

ant refused to surrender his certificate of citizenship. Other of the consul's narrative, hearsay, conclusions, advice, etc., is without evidentiary competency and value save to the extent it discloses the overzeal if not irritation and prejudice of an affronted man, and inspires more than usual caution in appraising trustworthiness in reporting more or less remote conversations with an accused and admissions imputed to him. If, however, the consul's report of defendant's declarations and [26] admissions be taken at face value, it fails to prove the vital fact that alone may invoke the presumption of defendant's fraud in procuring the certificate. Even if the declarations and admissions of past acts but of only present intent, suffice to prove that then presently defendant was a permanent resident in South Africa, they fall short of proving that such permanent residence began twelve—seventeen years theretofore and within five years after certificate issued,—the vital fact as aforesaid. The mere fact that eleven months after certificate issued, the citizen in his employer's business goes abroad, in it is detained twelve years, then avows his intent to return to the United States for permanent residence when his employer desired, and refuses to surrender his certificate of citizenship to one who officiously demands it, are not proof that the citizen by act and intent abandoned his domicile in the United States and acquired a domicile abroad, all within five years after certificate issued. They are reasonably consistent with domicile in the United States until the time of the declaration if



not always, and by reason of them is no backward presumption otherwise. A change of abode with present intent to return to the former abode upon the contemplated happening of an event, in the indefinite future, as business despatched, health recovered, employment ended, employer's recall, is not a change of residence or domicile. If, however, a person removes to another place with present intent to abide there indefinitely and not merely until contemplated happening of a contingency as aforesaid, he abandons his old residence or domicile in the place from which he removed, and acquires new residence or domicile in the place to which he removed, notwithstanding he may entertain a vague, floating intent or hope to some time return to the former place. The distinction and difference are that in legal contemplation [27] the first case is a present intent to return and independent of future determinations; whereas, the second case is a mere present expectation or hope to return, and wholly dependent upon future state of mind. The latter, unlike the former, does not rise to the dignity of that "present intent" which is a vital element of residence or domicile.

See *Williamson vs. Osenton*, 232 U. S. 619.

*Gilbert vs. Davis*, 235 U. S. 561.

It must be borne in mind these proceedings are to annul a solemn judicial grant of and by the United States to defendant, and "nothing will warrant cancellation of his grant of citizenship but clear, unequivocal and convincing evidence, that in quantity and quality inspires confidence and

produces conviction of the truth of the charge, virtually beyond reasonable doubt.”

U. S. vs. Sharrock, 276 Fed. 32.

The evidence in this case is short of that high character. Like comment applies to the admissions of voting and community interest. All may have been presently.

Taken as a whole, the evidence fails to persuade the conscience of the chancellor that justice would be done by a decree against defendant, and so the decree is for him.

Aug. 1, 1923.

BOURQUIN, J.

Filed August 1, 1923. C. R. Garlow, Clerk.

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Thereafter, and on August 11, 1923, decree was duly filed and entered herein, being in the words and figures following, to wit: [28]

In the District Court of the United States, in and  
for the District of Montana.

No. 222.

UNITED STATES

vs.

SIDNEY E. KNIGHT.

DECREE.

This cause came on to be heard at this term, and was submitted without argument; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows: That the Court finds the

issues in favor of defendant and against plaintiff, and thereupon concludes that plaintiff is not entitled to recover and the proceedings should be and are dismissed.

August 11, 1923.

BOURQUIN,  
Judge.

Entered and filed Aug. 11, 1923. C. R. Garlow,  
Clerk.

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Thereafter, and on December 7, 1923, petition for appeal and order allowing same was duly filed herein, being in words and figures following, to wit:  
[29]

In the District Court of the United States, District  
of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

PETITION FOR APPEAL.

To the Honorable GEORGE M. BOURQUIN, Judge  
of the United States District Court Aforesaid:

The United States of America, plaintiff above named, feeling itself aggrieved by the decree made and entered in this cause on the 11th day of August, A. D. 1923, does hereby appeal from said decree to the United States Circuit Court of Appeals for the

Ninth Circuit, for the reasons specified in the assignment of error, which is filed herewith, and prays that its appeal be allowed and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, and for such other and further order as to the Court may seem just and meet.

(Signed) JOHN L. SLATTERY,  
United States Attorney, District of Montana,  
Attorney for Plaintiff. [30]

The foregoing petition is hereby granted and appeal allowed to the United States of America.

Done in open court at Great Falls, Montana, this 7 day of December, 1923.

(Signed) BOURQUIN,  
Judge.

Filed Dec. 7, 1923. C. R. Garlow, Clerk. By  
H. H. Walker, Deputy.

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Thereafter, and on December 7, 1923, assignment of errors was duly filed herein, being in the words and figures following, to wit: [31]

In the District Court of the United States, District  
of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

ASSIGNMENT OF ERRORS.

Now, and on this 7th day of December, 1923, comes the United States of America, the plaintiff in this cause, by John L. Slattery, United States Attorney for the District of Montana, and in connection with the petition of plaintiff for an appeal herein, hereby makes the following assignment of errors, which plaintiff avers occurred in this cause:

I.

The Court erred in finding the evidence taken in said cause, at the hearing thereof, was insufficient to sustain the allegations of the bill of complaint herein.

II.

The Court erred in ordering a decree herein in favor of the defendant and against the plaintiff, dismissing plaintiff's bill of complaint.

III.

The Court erred in entering a decree herein in favor of defendant and against the plaintiff, dismissing plaintiff's bill of complaint. [32]

WHEREFORE, the plaintiff prays that the said decree be reversed and the United States Circuit Court of Appeals for the Ninth Circuit direct a proper decree in favor of the plaintiff and against the defendant in accordance with the prayer of plaintiff's said bill of complaint and the record in this cause.

(Signed) JOHN L. SLATTERY,  
United States Attorney, District of Montana.

Filed Dec. 7, 1923. C. R. Garlow, Clerk. By  
H. H. Walker, Deputy.

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Thereafter, and on December 7, 1923, order extending time to prepare record on appeal was duly filed herein, being in the words and figures following, to wit: [33]

In the District Court of the United States, District  
of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

ORDER EXTENDING TIME THIRTY DAYS TO  
FILE RECORD AND DOCKET CAUSE.

Upon good cause shown, it is hereby ordered that plaintiff and appellant in the above-entitled cause, may have thirty days in addition to the time allowed by the rules of this court within which to have prepared and certified up to the Circuit Court of Appeals for the Ninth Circuit, the record on appeal herein.

Dated this 7 day of December, A. D. 1923.

(Signed) BOURQUIN,  
Judge.

Filed Dec. 7, 1923. C. R. Garlow, Clerk. By  
H. H. Walker, Deputy.

Thereafter, and on December 19, 1923, citation on appeal was duly issued and filed herein, which original citation is hereto annexed, and is in the words and figures following, to wit: [34]

In the District Court of the United States, District of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

CITATION ON APPEAL.

To Sidney E. Knight, Defendant and Appellee,  
GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, sitting at the city of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Montana, wherein the United States of America is appellant and Sidney E. Knight is appellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court, District of Montana, this 19 day of December, 1923.

BOURQUIN,  
Judge United States District Court, District of  
Montana. [35]

United States of America,  
District of Montana,—ss.

W. H. Meigs, being duly sworn, deposes and says:

That he is over the age of twenty-two years and a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that on the 19th day of December, 1923, he served the foregoing citation on appeal by leaving a copy thereof for the said Sidney E. Knight with C. R. Garlow, Clerk of the United States District Court for the District of Montana, at his office in the Federal Building, in the city of Great Falls, Montana, and by depositing an additional copy thereof, securely sealed, in an envelope, in the United States Postoffice at Great Falls, Montana, with full pre-paid registered postage thereon, the said envelope being addressed as follows:

Mr. Sidney E. Knight,

Cape Town,

Union of South Africa,

the same being the last known address of the said Sidney E. Knight, defendant and appellee herein.

This in compliance with paragraph 4 of Rule 33, Rules of Practice of the United States Circuit Court



of Appeals for the Ninth Circuit, in and for the District of Montana.

W. H. MEIGS.

Subscribed and sworn to before me this 19th day of December, 1923.

[Seal]

C. R. GARLOW,

Clerk United States District Court, District of Montana. [36]

Stamp of dispatching office.  
[Great Falls, Mont.  
Registered Dec. 19, 1923.]

ADMINISTRATION OF UNITED STATES OF AMERICA.  
RETURN RECEIPT

for a letter with declared value of— }  
for a registered article—letter (1)— } entered at the office  
Great Falls, Mont., Dec. 19, 1923. No. 14602 (2)  
mailed by M—U. S. Dist. Atty. Helena, Mont.  
and addressed to M—Sidney E. Knight (at).....  
complete address—Cape Town, So. Africa

The undersigned declares that a { letter with declared value } to the above  
{ registered article }  
address, and originating at .....  
has been duly delivered the ...., 19

Stamp of delivering office.  
[Cape Town, So. Africa  
29 Jan. 24]

Signature (3) of the addressee:

Signature (3) of the postal official of the office of delivery:

Mua Lenen.

(1) Nature of the article (letter, sample, print, etc.).

(2) Office of origin; date of mailing at that office; registration No. of that office.

(3) NOTE.—This receipt must be signed by the addressee or, if the regulations of the country of destination permit it, by the postal official of the office of delivery, then placed in an envelope and sent by the first mail to the office of origin of the article to which it relates.

[Endorsed]: No. 222. In the District Court of the United States, District of Montana, Helena Division. The United States of America, Plaintiff, vs. Sidney E. Knight, Defendant. Citation on Appeal. Filed Dec. 19, 1923. C. R. Garlow, Clerk.  
[37]

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Thereafter, and on December 19, 1923, statement of the evidence was received in the clerk's office, and on March 12, 1924, was approved and filed, being in the words and figures following, to wit:  
[38]

In the District Court of the United States, District of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED, that the above-entitled cause came regularly on for trial before the above-entitled court on the 18th day of July, 1923, the plaintiff being represented by John L. Slattery, Esq., United States Attorney for the District of Montana, the defendant being in default and not represented.

And thereupon the following proceedings were had and the following evidence was duly introduced and submitted in said cause:

CERTIFIED COPY OF CERTIFICATE OF  
CHARLES J. PISAR, AMERICAN VICE-  
CONSUL AT CAPE TOWN, SOUTH AFRICA.

No. 10,196.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To All to Whom These Presents Shall Come,  
GREETING:

I certify that the attached certificate regarding the acquisition of a permanent residence abroad by Mr. Sidney Ernest Knight within five years after his naturalization as a citizen of the United States was executed by the American Vice-Consul at Cape Town, South Africa, pursuant to Section 15 of the Act of June 29, 1906. [39]

In Testimony Whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 22d day of December, 1921.

(Signed) CHARLES E. HUGHES,

Secretary of State.

[Seal] By (Signed) BEN G. DAVIS,

Chief Clerk.

I, Charles J. Pisar, Vice-consul of the United States of America, at Cape Town, Union of South Africa, hereby certify that I am personally acquainted with Sidney Ernest Knight, who resides at Cape Town; that he stated under oath on May 26, 1917, when he registered as an American citizen at

the American Consulate General at Cape Town, that he was born in London on September 24, 1875; that he came to the United States in May, 1890; that he was a naturalized American citizen, submitting his naturalization certificate, issued by the First Judicial Court at Helena, Montana, on November 5, 1900, in proof thereof; that he came to Cape Town on September 13, 1901, for the purpose of representing the Mercantile Agency, R. G. Dun & Company, of 290 Broadway, New York City, which firm he has constantly represented in South Africa since, and that he intended to return to the United States for permanent residence whenever his employers so desired.

I further certify that on October 25, 1920, Mr. Knight appeared at the American Consulate General at Cape Town, bearing passport No. 32,218/11 issued to him by the [40] Government of the Union of South Africa on October 19, 1920, with a request for a visa thereto to enable him to proceed to the United States in connection with the business of the firm he represents, and that such a visa was granted him by Vice-Consul Charles W. Allen, to whom Mr. Knight was not personally known to be a citizen of the United States.

I further certify that answering an invitation to call at the American Consulate General, Mr. Knight appeared on October 26, 1921, and upon being questioned concerning his citizenship, stated to me that he applied for a British passport in October, 1920, for specific reasons which he declined to divulge; that when he applied for said passport he was not

required to take an oath of allegiance to the British Crown, or to swear to the declaration made in applying for the passport; that he admitted that he has now lived for twenty years in South Africa, returning to the United States but once during this period, and that he did not know when he would return for permanent residence; that he had voted on several occasions at elections in South Africa, and that he has acquired interest in local community affairs, and intended to take an active part therein during his residence here.

I further certify that Mr. Knight left the United States within less than one year after completing his naturalization as a citizen of the United States of America, and while he has been representing American interest in South Africa, he has failed to adhere to his oath of allegiance as an American citizen, and that his naturalization as an American citizen was fraudulently obtained, and should be revoked. [41]

I further certify that Mr. Knight refused to surrender his Certificate of Naturalization.

Given under my hand and official seal at City of Cape Town, Union of South Africa, this 29th day of October, A. D. 1921.

[Seal] (Signed) CHARLES J. PISAR,  
Vice-Consul of the United States of America.

WHEREFORE, plaintiff prays that the above and foregoing certificate and testimony taken in said cause, be settled, approved and allowed by the above-entitled court as a true, full and complete statement of the evidence relative and material to

the issues in the above-entitled cause for use on the appeal taken to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

JOHN L. SLATTERY,

United States Attorney for the District of Montana,  
Attorney for Plaintiff.

The above and foregoing is hereby approved as a true and complete statement of the evidence in the above-entitled cause.

Dated March 12, 1924.

CHARLES N. PRAY,

Judge. [42]

United States of America,  
District of Montana,—ss.

W. H. Meigs, being duly sworn, deposes and says:

That he is over the age of twenty-one years and a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that on the 19th day of December, 1923, he served the foregoing statement of evidence on appeal by leaving a copy thereof for the said Sidney E. Knight with C. R. Garlow, clerk of the United States District Court for the District of Montana, at his office in the Federal Building, in the city of Great Falls, Montana, and by depositing an additional copy thereof, securely sealed, in an envelope, in the United States Postoffice at Great Falls, Montana,

with full prepaid registered postage thereon, the said envelope being addressed as follows:

Mr. Sidney E. Knight,

Cape Town,

Union of South Africa,

the same being the last-known address of the said Sidney E. Knight, defendant and appellee herein.

This in compliance with Paragraph 4 of Rule 33, Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit, in and for the District of Montana.

W. H. MEIGS.

Subscribed and sworn to before me this 19th day of December, 1923.

[Seal]

C. R. GARLOW,

Clerk United States District Court, District of Montana.

Received Dec. 19, 1923. C. R. Garlow, Clerk.

Filed March 12, 1924. C. R. Garlow, Clerk. [43]

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Thereafter, and on December 19, 1923, notice of motion to approve statement of evidence was filed herein, being in the words and figures following, to wit: [44]

In the District Court of the United States, District  
of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

NOTICE OF MOTION TO APPROVE STATE-  
MENT OF EVIDENCE ON APPEAL.

To Sidney E. Knight, Defendant in the Above-en-  
titled Action:

You are hereby notified that the undersigned at-  
torney for the plaintiff and appellant herein has  
this day lodged with the clerk of the aforesaid  
court, plaintiff's statement of the evidence on ap-  
peal herein, and that at Butte, in the State and Dis-  
trict of Montana, on the 25th day of February, 1924,  
at the hour of 9:30 A. M. of said day, or as soon there-  
after as counsel can be heard, the undersigned will  
ask the Court or Judge to approve the aforesaid  
statement of the evidence on appeal herein.

JOHN L. SLATTERY,

United States Attorney, District of Montana,  
Attorney for Plaintiff. [45]

United States of America,  
District of Montana,—ss.

W. H. Meigs, being duly sworn, deposes and says:  
That he is over the age of twenty-one years and a



duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that on the 19th day of December, 1923, he served the foregoing notice of motion to approve statement of evidence on appeal by leaving a copy thereof for the said Sidney E. Knight with C. R. Garlow, clerk of the United States District Court for the District of Montana, at his office in the Federal Building, in the city of Great Falls, Montana, and by depositing an additional copy thereof, securely sealed, in an envelope, in the United States Post Office at Great Falls, Montana, with full pre-paid registered postage thereon, the said envelope being addressed as follows:

Mr. Sidney E. Knight,  
Cape Town,

Union of South Africa,  
the same being the last known address of the said Sidney E. Knight, defendant and appellee herein.

This in compliance with paragraph 4 of Rule 33, Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit, in and for the District of Montana.

(Signed) W. H. MEIGS.

Subscribed and sworn to before me this 19th day of December, 1923.

[Seal] C. R. GARLOW,  
Clerk United States District Court, District of  
Montana.

Filed Dec. 19, 1923. C. R. Garlow, Clerk. [46]

Thereafter, and on January 29, 1924, order extending time to prepare record an appeal was duly made and entered herein, being in the words and figures following, to wit: [47]

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

SIDNEY E. KNIGHT,

Appellee.

ORDER EXTENDING FURTHER TIME TO  
PREPARE RECORD ON APPEAL.

IN THIS CAUSE and on the 7th day of December, 1923, an order was duly made and given granting unto the plaintiff and appellant in the above-entitled cause thirty days in addition to the time allowed by the rules of this Court within which to have prepared and certified to the Circuit Court of Appeals for the Ninth Circuit, the record on appeal herein, which said additional time will expire on February 19, 1924; and it further appearing to the Court that the appellee resides in Cape Town, Union of South Africa, and that the notice of motion to approve statement of evidence on appeal will expire on February 25, 1924;

NOW, THEREFORE, upon good cause shown, it is hereby ordered that the said plaintiff and appellant may have thirty days additional time

from and after February 19, 1924, in which to have prepared and certified up to the United States Circuit Court of Appeals for the Ninth Circuit, the record on appeal herein.

Dated this 29th day of January, 1924.

BOURQUIN,  
Judge. [48]

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That on December 19, 1923, a praecipe for transcript of record was duly filed herein, being in the words and figures following, to wit: [49]

In the District Court of the United States, District of Montana, Helena Division.

EQUITY—No. 222.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

SIDNEY E. KNIGHT,  
Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, pursuant to the appeal allowed in the above-entitled cause, and to incorporate in such transcript of record the following papers, to wit:

1. The bill of complaint.
2. Subpoena in equity.
3. Affidavit for order directing service by publication.
4. Order for publication.
5. Affidavit of mailing copy of subpoena together with copy of bill of complaint.
6. Affidavit of publication.
7. Order *pro confesso*.
8. Opinion of the Court rendered and filed August 1, 1923.
9. Decree made and entered August 11, 1923.
10. Copy of petition for appeal and allowance thereof by the Court.
11. Assignment of errors, accompanying appeal.  
[50]
12. Order extending time for completing and transmitting the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.
13. Citation on appeal.
14. Statement of evidence on appeal.
15. Notice of motion to approve statement of evidence on appeal.
16. Copy of this praecipe.
17. Any other file, paper or document required to be incorporated in a transcript of record herein under the practice and rules of the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 19th day of December, 1923.

(Signed) JOHN L. SLATTERY,  
United States Attorney, District of Montana,  
Attorney for Plaintiff. [51]

United States of America,  
District of Montana,—ss.

W. H. Meigs, being duly sworn, deposes and says:

That he is over the age of twenty-two years and a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that on the 19th day of December, 1923, he served the foregoing praecipe for transcript of record by leaving a copy thereof for the said Sidney E. Knight with C. R. Garlow, clerk of the United States District Court for the District of Montana, at his office in the Federal Building, in the city of Great Falls, Montana, and by depositing an additional copy thereof, securely sealed, in an envelope, in the United States Post Office at Great Falls, Montana, with full prepaid registered postage thereon, the said envelope being addressed as follows:

Mr. Sidney E. Knight,

Cape Town,

Union of South Africa,

the same being the last known address of the said Sidney E. Knight, defendant and appellee herein.

This in compliance with paragraph 4 of Rule 33, Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit, in and for the District of Montana.

(Signed) W. H. MEIGS.

Subscribed and sworn to before me this 19 day of December, 1923.

[Seal] C. R. GARLOW,  
Clerk United States District Court, District of  
Montana.

Filed Dec. 19, 1923. C. R. Garlow, Clerk. [52]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Montana,—ss.

I, C. R. Garlow, clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 53 pages, numbered consecutively from one to 53, inclusive, is a full, true and correct transcript of the record and proceedings had in the within entitled cause, and of the whole thereof, required to be incorporated in the record on appeal therein by praecipe filed, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Sixteen & 95/100 (\$16.95) Dollars, and have been made a charge against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 14th day of March, A. D. 1924.

[Seal]

C. R. GARLOW,

Clerk.

By H. H. Walker,

Deputy. [53]

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[Endorsed]: No. 4222. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Sidney E. Knight, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed March 18, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

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In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

SIDNEY E. KNIGHT,

Appellee.

ORDER EXTENDING TIME THIRTY DAYS  
FROM FEBRUARY 19, 1924, TO FILE  
RECORD AND DOCKET CAUSE.

IN THIS CAUSE and on the 7th day of December, 1923, an order was duly made and given granting unto the plaintiff and appellant in the above-entitled cause thirty days in addition to the time allowed by the rules of this Court within which to have prepared and certified to the Circuit Court of Appeals for the Ninth Circuit, the record on appeal herein, which said additional time will expire on February 19, 1924; and it further appearing to the Court that the appellee resides in Cape Town, Union of South Africa, and that the notice of motion to approve statement of evidence on appeal will expire on February 25, 1924,—

NOW THEREFORE, upon good cause shown, it is hereby ordered that the said plaintiff and appellant may have thirty days' additional time from and after February 19, 1924, in which to have prepared and certified up to the United States Circuit Court of Appeals for the Ninth Circuit, the record on appeal herein.

Dated this 29 day of January, 1924.

BOURQUIN,  
Judge.

[Endorsed]: No. 4222. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Sidney E. Knight, Appellee. Order Extending Further Time to Prepare Record on Appeal. Filed Feb. 4, 1924. F. D. Monckton, Clerk. Refiled Mar. 18, 1924. F. D. Monckton, Clerk.